

August 20, 1958

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CONCORD, N.H.

Kenneth L. Cowan, Director  
Division of Inheritance Taxes  
State Tax Commission  
Concord, New Hampshire

Re: Estate of Daniel E. Lunt

Dear Mr. Cowan:

In a letter of August 18, 1958, you described the case of a person who sometime ago and without her knowledge was made a joint tenant of realty along with a husband and wife. Upon the death of the husband she learned for the first time of her status as a joint tenant, and thereupon exercised a deed conveying her interest in the property to the spouse, the other surviving joint tenant.

There has now been filed with you an affidavit made by the person under consideration purporting on its face to have been executed "for the purpose of nullifying or avoiding the effect" of the conveyance in joint tenancy. In its further terms the affidavit sets forth that the affiant has never claimed an interest in the realty, and that she "renounce[s] any claim, right, title or interest thereto".

The affidavit is accompanied by a letter from counsel for the administratrix containing the request that upon the basis of such instrument you issue a waiver of the tax which otherwise would be imposed by RSA 86:8 and RSA 86:9 with respect to the interest of the subject person in the real estate upon the death of the first joint tenant. You state that you doubt the propriety of issuing such a waiver in the state of the facts. We concur with your conclusion in this respect.

We believe that the principles set forth in Bradley v. State, 100 N.H. 234, while enunciated in connection with a joint tenancy in personality are equally applicable to a similar tenancy in realty. Thus, just as a person upon being informed that he has been made a joint tenant in a bank account may disclaim such status and renounce the interest which would otherwise accrue to him, so also may a person who, without his consent,

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has been made a joint tenant of realty refuse to recognize the creation of such a status when apprised of it.

However, in her deed conveying her interest to the surviving spouse the person under discussion has done an act completely inconsistent with renunciation or disclaimer of her status as a joint tenant. In conveying her interest she has acknowledged its existence and has exercised dominion over it. The present attempt at renunciation as set forth in the affidavit is unavailing to avoid the tax in such circumstances.

We advise, then, that you are to compute the tax upon the realty involved in the manner set forth in the statutes cited.

Very truly yours,

Warren E. Waters  
Deputy Attorney General